

IN THE COURT OF APPEALS  
STATE OF ARIZONA  
DIVISION TWO

FILED BY CLERK

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COURT OF APPEALS  
DIVISION TWO

IN RE RICARDO M.

) 2 CA-JV 2006-0046

) DEPARTMENT A

) MEMORANDUM DECISION

) Not for Publication

) Rule 28, Rules of Civil

) Appellate Procedure

APPEAL FROM THE SUPERIOR COURT OF SANTA CRUZ COUNTY

Cause No. JV-06-048

Honorable Kimberly A. Corsaro, Judge Pro Tempore

AFFIRMED

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By Michael H. Vaughan

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V Á S Q U E Z, Judge.

¶1 Appellant Ricardo M. appeals from the juvenile court's order dismissing without prejudice a delinquency petition the state had filed in June 2006, which charged him with possession of marijuana and possession of drug paraphernalia. Ricardo contends the

juvenile court erred by denying his request that the dismissal be with prejudice. We disagree and affirm.

¶2 Rule 25(B), Ariz. R. P. Juv. Ct., 17B A.R.S., sets forth time limits within which a delinquency petition must be filed. Relevant to this case, Rule 25(B)(2) provides that, if a juvenile is not being detained,

the petition shall be filed within forty-five (45) days of submission of the referral to the prosecutor. The time for filing a petition is extended for an additional thirty (30) days pending further investigation by the prosecutor. No more than one thirty (30) day extension of time for further investigation shall be allowed except upon order of the court for good cause shown.

Rule 18(C), Ariz. R. P. Juv. Ct., 17B A.R.S., provides that a juvenile may move to dismiss a petition if, “after subtracting any periods excluded pursuant to Rule 17, [the rules’ time limits] have been violated.” Rule 18(C) further provides that the court may conduct a hearing on the motion, and “[i]f the motion to dismiss is granted, the court shall dismiss the petition without prejudice unless the court finds that the interests of justice require that the dismissal be with prejudice.”

¶3 Ricardo was arrested and detained on March 16, 2006, and was released the next day. The state received a referral from the juvenile probation department on March 29 and filed a delinquency petition on June 2. He was scheduled to appear before the court for an advisory hearing in June but filed a motion to continue that hearing, which the juvenile court granted. On July 11, at the time of the continued advisory hearing, Ricardo filed a motion to dismiss the petition with prejudice, contending the state’s petition had been

untimely filed. The state filed a response, and on August 3, after oral argument on the motion, the juvenile court dismissed the petition without prejudice.

¶4 It is undisputed that the petition was untimely. Ricardo contends the juvenile court abused its discretion by refusing to dismiss the petition with prejudice. He argues that the court applied Rules 18(C) and 25(B) incorrectly.

¶5 “[T]he procedures followed in dismissing adult criminal prosecutions should also apply in juvenile cases.” *In re Arnulfo G.*, 205 Ariz. 389, ¶ 8, 71 P.3d 916, 918 (App. 2003). Thus, this court reviews a juvenile court’s order on a motion to dismiss a prosecution with or without prejudice for “an abuse of discretion or for the application of an incorrect legal interpretation.” *Id.* ¶ 7, quoting *State v. Lemming*, 188 Ariz. 459, 460, 937 P.2d 381, 382 (App. 1997). The court here neither abused its discretion nor applied an incorrect legal standard.

¶6 In *In re Maricopa County Juvenile Action No. JV-114857*, 177 Ariz. 337, 338, 868 P.2d 350, 351 (App. 1993), Division One of this court addressed the question, “when may a juvenile court dismiss a case with prejudice?” At that time, the applicable rule permitted a court to dismiss a delinquency petition with or without prejudice for a violation of the applicable time limits but did not state, as Rule 18(C) now does, that a petition shall only be dismissed “without prejudice unless the court finds that the interests of justice require that the dismissal be with prejudice.” Relying on essentially the same language in the analogous criminal rule and cases interpreting that language, the court stated, “[t]he

primary consideration must be whether delay in prosecution will prejudice the defendant.”

*Id.* at 339, 868 P.2d at 352. The court added that, as in adult criminal prosecutions,

the need for finality alone is not a sufficient reason to dismiss a case with prejudice . . . . Nor can the state’s attempt to avoid the running of a time limit justify a dismissal with prejudice. However, “if the defendant can show that the state delayed for the purpose of gaining a tactical advantage over him or to harass him, and if he can show that he actually suffered prejudice as a result of the state’s conduct, a dismissal with prejudice would be justified.”

*Id.*, quoting *State v. Garcia*, 170 Ariz. 245, 248, 823 P.2d 693, 696 (App. 1991); accord

*Arnulfo G.*, 205 Ariz. 389, ¶ 9, 71 P.3d at 918.

¶7 Conceding that the standard for dismissing a case with prejudice is “quite stringent,” Ricardo maintains the standard was satisfied here. First, he essentially claims that a court must dismiss a petition for a violation of the pre-petition time limits because the violation will always exist and “[t]he state can[not] undo” that fact. He adds that “no petition based on the original referral c[an] be filed now or at any future time” and that any refiling would be inherently unjust and constitute harassment. Next, he contends a dismissal with prejudice is required because it serves the “policies underlying” the speedy trial rules that compel prompt resolution of actions involving juveniles and protection of children by treating and rehabilitating them. Finally, Ricardo suggests that a dismissal without prejudice essentially renders the time limits meaningless because it permits the state to delay prosecution, violate the time limits, and start anew by filing a new petition.

¶8 Ricardo has not established the juvenile court applied an incorrect standard in ruling on his motion to dismiss; indeed, the record belies that contention. At the August 3 hearing on the motion, the court expressly referred to the rules, rejecting the state’s contention that it was entitled to an additional thirty days to investigate the potential charges. The court explained to Ricardo that the time limit of the rule had been violated and the petition was untimely. But, the court added, “I’ve done research on this issue . . . and the case law does require that you show some sort of prejudice in order to have it dismissed with[] prejudice.”<sup>1</sup> The court was well aware of and applied the correct standard. And, as the authority noted above establishes, Ricardo’s suggestion to the juvenile court and on appeal that prejudice either need not be established or essentially may be presumed is incorrect.

¶9 We also reject Ricardo’s related suggestion that a violation of the time limit between arrest and the filing of charges can never be cured, and therefore, a dismissal must always be with prejudice. The rule expressly gives courts the choice between a dismissal with prejudice or without prejudice for any violation of the time limits applicable to delinquency proceedings. The rule thus clearly contemplates that a petition may be refiled

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<sup>1</sup>Although the transcript reads, “the case law does require that you show some sort of prejudice in order to have it dismissed **without** prejudice,” clearly, the court misspoke or the transcription is incorrect. To construe this portion of the transcript otherwise would be nonsensical; the court could not have meant that upon a showing of prejudice a juvenile would be entitled to dismissal of a petition without prejudice, but if no prejudice were shown, the petition would be dismissed with prejudice.

in appropriate circumstances. As the court recognized in *Maricopa County No. JV-114857*, “all dismissals without prejudice will have that effect.” 177 Ariz. at 339, 868 P.2d at 352.

¶10 Additionally, the rule would be meaningless, and the portion of it permitting a dismissal without prejudice superfluous, if all violations of Rule 25(B)(2) were presumptively prejudicial and such untimely petitions had to be dismissed with prejudice. We will not interpret a supreme court rule in a manner that renders it meaningless or superfluous. *See Bergeron ex rel. Perez v. O’Neil*, 205 Ariz. 640, ¶ 16, 74 P.3d 952, 958 (App. 2003) (in construing procedural rules promulgated by supreme court, appellate court employs traditional tools of statutory construction); *cf. Mejak v. Granville*, 212 Ariz. 555, ¶ 9, 136 P.3d 874, 876 (2006) (courts will interpret a statute “so that no provision is rendered meaningless, insignificant, or void”). And, based on the authority discussed above, Ricardo’s characterization of what constitutes prejudice and harassment is incorrect. *See State v. Gilbert*, 172 Ariz. 402, 405, 837 P.2d 1137, 1140 (App. 1991) (former Rule 16.5, Ariz. R. Crim. P., 17 A.R.S., “requires a reasoned finding that the interests of justice require the dismissal to be with prejudice . . . [and] setting an arbitrary time limit in the absence of circumstances demonstrating that the defendant will suffer some articulable prejudice as a result of the lapse of that period of time is less than the rule contemplates”).

¶11 Nor has Ricardo established the juvenile court abused its discretion. There was no evidence the state intentionally had delayed the process in order to gain a “tactical advantage over him or to harass him.” *Maricopa County No. JV-114857*, 177 Ariz. at 339,

868 P.2d at 352. And Ricardo never attempted to establish how he was specifically prejudiced by the untimeliness of the petition.

¶12 Ricardo attempts to distinguish *Maricopa County No. JV-114857* and *Arnulfo G.*, intimating that the “stringent” standard of those cases should be loosened. He maintains that in those cases, unlike here, there was no violation of the time limits. But there is nothing in those cases to suggest that the determination of what constitutes “in the interests of justice” does not apply when time limits have been violated, particularly the rule-based period between referral of the charges and the filing of the petition. The court articulated criteria in *Maricopa County No. JV-114857* applicable in all circumstances, even if there has been no violation of a time limit but only an attempt by the state to delay proceedings and avoid violating the rule’s time limits. *Id.* Relying on *Maricopa County No. JV-114857*, 177 Ariz. at 339, 868 P.2d at 352, the court specified in *Arnulfo G.* that

[i]n the absence of a speedy trial violation,<sup>2</sup> a dismissal with prejudice would only be justified if [the] Juvenile could demonstrate that the state delayed the case for the purpose of gaining a tactical advantage over him or to harass him, and if he could show that he actually suffered prejudice as a result of the state’s conduct.

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<sup>2</sup>It is not entirely clear what the court meant by “speedy trial violation.” *Arnulfo G.*, 205 Ariz. 389, ¶ 9, 71 P.3d at 918. The delay at issue here—from arrest to the filing of a delinquency petition—is akin to pre-indictment delay in the adult criminal context, which is distinguishable from “the Sixth Amendment’s speedy trial protections.” *State v. Montano*, 204 Ariz. 413, n.2, 65 P.3d 61, 67 n.2, *supp. op.*, 206 Ariz. 296, 77 P.3d 1246 (2003).

205 Ariz. 389, ¶ 9, 71 P.3d at 918. We do not find either decision meaningfully distinguishable.

¶13 Finally, we summarily reject Ricardo’s contention that permitting the state to refile the petition after the rule has been violated thwarts the policies of expediting juvenile proceedings and rehabilitating juveniles. As the court stated in *Maricopa County No. JV-114857*, “the need for finality alone is not a sufficient reason to dismiss a case with prejudice.” 177 Ariz. at 339, 868 P.2d at 352. And Ricardo has not persuaded us that the delay resulting from a proper application of the rules thwarts efforts to rehabilitate a minor who has yet to be adjudicated delinquent.

¶14 The juvenile court’s order dismissing the delinquency petition without prejudice is affirmed.

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GARYE L. VÁSQUEZ, Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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JOSEPH W. HOWARD, Presiding Judge